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OCT 15 1996

ROSENMAN & COLIN LLP

1300 19TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640

FACSIMILE: (202) 429-0046

WEB SITE: <http://www.rosenman.com>

October 15, 1996

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket No. 96-43
FM Table of Allotments
Frederiksted, Virgin Islands

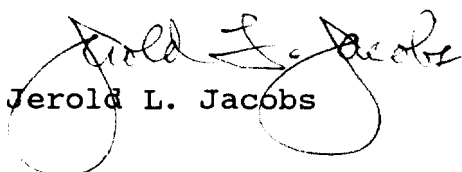
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, D/B/A Calypso Communications, are an original and four (4) copies of its "REQUEST FOR EXPEDITED ACTION" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

24

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 15 1996

Director, Office of the
Chief of Bureau

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-43
Table of Allotments,) RM-8754
FM Broadcast Stations)
(Frederiksted and Charlotte Amalie,¹) RM-8830
Virgin Islands))

To: Chief, Allocations Branch
Mass Media Bureau

REQUEST FOR EXPEDITED ACTION

D/B/A CALYPSO COMMUNICATIONS ("Calypso"), permittee of Station WVN(FM), Charlotte Amalie, Virgin Islands, by its attorneys, hereby respectfully requests expedited action in the above-captioned FM channel rulemaking proceeding. In support whereof, the following is shown:

1. The subject proceeding commenced with the release of a Notice of Proposed Rule Making, 11 FCC Rcd 3010 (Mass Media Bur. 1996), in March 1996. The pleading cycles on all matters raised by the parties concluded on July 10, 1996. Thus, this proceeding is now ripe for decision. Although Calypso is well aware that there are older allotment proceedings which are also available for Commission action, Calypso urges that special circumstances described below warrant expedited action herein.

2. The record reflects that the Commission originally allotted Station WVN's Channel 246B to Charlotte Amalie by Report and Order in MM Docket No. 86-290 (Charlotte Amalie VI), 2 FCC Rcd 1939 (Mass Media Bur. 1987). Calypso filed its application on July 7, 1987, but no construction permit was issued until June 25, 1991. However, it soon became

¹ The community of Charlotte Amalie, Virgin Islands has been added to the caption.

clear that Channel 246B was not usable because operations would result in mutually destructive interference with Channel 247C, which is authorized in Tortola, British Virgin Islands.

3. In 1992, when efforts to resolve this foreign interference through diplomatic negotiations with the British Virgin Islands failed, Calypso filed a petition for rulemaking seeking to substitute Channel 267B for Channel 246B. The Commission issued a Notice of Proposed Rulemaking in MM Docket No. 92-244, 7 FCC Rcd 7236 (Mass Media Bur. 1992), which proposed to adopt Calypso's channel substitution proposal; however, the Commission subsequently released a Report and Order, 10 FCC Rcd 8111 (Mass Media Bur. 1995), in which it allotted Channel 267B to another Virgin Islands community and left WVNIX on Channel 246B. In the subject proceeding, Calypso has urged that it is now Station WVNIX's proper turn for relief.

4. Importantly, the Mass Media Bureau's Audio Services Division also has jurisdiction over Station WVNIX's future, because Calypso is required to keep its construction permit current, even though it is unusable. Thus, simultaneously with this request for expedited action, Calypso has filed an FCC Form 307 application, seeking a third extension of Station WVNIX's current construction permit (Exhibit A hereto). In Exhibit 1 of that application, Calypso explains that its pro-active steps during the last six months (Station WVNIX's most recent construction permit period) to try to implement its permit involved seeking alternative frequencies to substitute for Channel 246B at Charlotte Amalie -- with specific emphasis on the four pleadings Calypso filed in this proceeding since May 1, 1996. Calypso urges in Exhibit 1 that, until this rulemaking proceeding is completed, Calypso should be deemed unable to construct Station WVNIX due to circumstances clearly beyond its control within the meaning of §73.3534(b)(3) of the Commission's Rules. While the Audio Services Division may continue

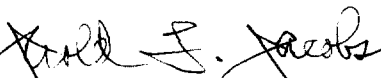
to grant extensions of Station WVN~~X~~'s construction permit for however long the subject proceeding remains unresolved, there are no guarantees of such patience with Station WVN~~X~~'s situation, given the Division's recently-toughened extension policies for unbuilt stations.

5. In sum, Calypso's reason for seeking expedited action herein is to foster prompt closure to the Commission's nine-year-old allotment judgment that an additional radio voice should be established at Charlotte Amalie. Whether or not the Commission concludes that a different frequency should be awarded to Station WVN~~X~~ in this proceeding, Calypso urges that at least expedited consideration is warranted to attempt to give long-overdue meaning and viability to the Allocations Branch's 1987 allotment decision and to permit Calypso to construct its authorized broadcast station on a usable frequency.

WHEREFORE, D/B/A Calypso Communications respectfully requests that the Commission should grant expedited action in this proceeding.

Respectfully submitted,

D/B/A CALYPSO COMMUNICATIONS

By 
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

Dated: October 15, 1996

Rosenman

EXHIBIT A

ROSENMAN & COLIN LLP

1300 19TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640

FACSIMILE: (202) 429-0046

WEB SITE: <http://www.rosenman.com>

October 15, 1996

BY FEDERAL EXPRESS

Federal Communications Commission
Mass Media Services
P.O. Box 358195
Pittsburgh, PA 15251-5195

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: D/B/A Calypso Communications
Station WVN(X)FM, Charlotte Amalie VI
File No. BPH-870707MI as modified by
BPH-930813JA
FCC Form 307 Application

Dear Sir/Madam:

Transmitted herewith on behalf of our client, D/B/A Calypso Communications ("Calypso"), permittee of unbuilt Station WVN(X)FM, Charlotte Amalie, Virgin Islands, are an original and one (1) copy of an application on FCC Form 307 for a further six-month extension of its above-referenced construction permit, which expires on November 15, 1996.

Also enclosed is a check in the amount of \$245.00 to cover the requisite filing fee.

Please note that an additional "RETURN" copy of this application is enclosed herewith to be date-stamped by the Commission upon receipt and returned to the undersigned in the enclosed self-addressed envelope.

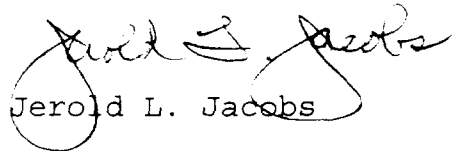
In Exhibit 1 of Calypso's application, Calypso explains that it continues to be unable to construct Station WVN(X)FM due to circumstances beyond its control. Specifically, Calypso has been authorized to construct Station WVN(X)FM on Channel 246B, but operations on that channel are not technically feasible because Station WVN(X)FM would face harmful interference from a foreign FM station authorized to operate on Channel 247 at Tortola, British Virgin Islands. Hence, Calypso continues to seek alternative frequencies which it can substitute for Channel 246B at Charlotte Amalie via an FM channel rulemaking proceeding, and Exhibit 1 describes Calypso's important pro-active rulemaking efforts during the last six months in MM Docket No. 96-43 to secure a new frequency. The pleading cycle is now over, and the matter is now awaiting Commission action.

Calypso is hopeful of favorable action in MM Docket No. 96-43. However, until then, Calypso urges that its continued inability to construct is due to reasons beyond its control which warrant grant of a further six-month extension of its construction permit.

Federal Communications Commission
October 15, 1996
Page 2

Please direct any inquiries or communications concerning this matter to the undersigned.

Very truly yours,



Jerold L. Jacobs

Enc.

cc: Linda Blair, Chief
Audio Services Division
James R. Crutchfield, Supervisor
Processing Support Group (**all FCC - BY Hand - w/enc.**)

FOR
FCC
USE
ONLY

FCC 307

APPLICATION FOR EXTENSION OF BROADCAST
CONSTRUCTION PERMIT OR TO REPLACE EXPIRED
CONSTRUCTION PERMIT

(CAREFULLY READ INSTRUCTIONS BEFORE FILLING OUT THIS FORM)

FOR COMMISSION USE ONLY

FILE NO.

1. APPLICANT NAME (Last, First, Middle Initial)

D/B/A Calypso Communications*

MAILING ADDRESS (Line 1) (Maximum 35 characters)

P.O. Box 4084

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY

Christiansted, St. Croix

STATE OR COUNTRY (if foreign address)

U.S. Virgin Islands

ZIP CODE

00820

TELEPHONE NUMBER (include area code)

(809) 773-0995

CALL LETTERS OR OTHER FCC IDENTIFIER (IF APPLICABLE)

WVNX (FM)

2. A. Is a fee submitted with this application?

☒

Yes

☐

No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1112).

☐

Governmental Entity

☐

Noncommercial educational
licensee/permittee

☐

Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

(A)

FEE TYPE CODE		
M	K	R

(B)

FEE MULTIPLE (if required)			
0	0	0	1

(C)

FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	
\$	245.00

FOR FCC USE ONLY

3. PURPOSE OF APPLICATION: ☒

a. Additional time to construct
broadcast station

☐

b. Construction permit to replace
expired permit

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT

Legal name of Applicant

D/B/A Calypso Communications

File Number

MI
BPH-870707 as mod. by
BMPH-930813JA

Call Letters

WVNX (FM)

☒

Main Transmitter

☐

Auxiliary Transmitter

Frequency

97.1 MHz

Channel No.

246B

City

Charlotte Amalie

State

VI

5. Submit as an Exhibit a list of the file numbers of pending applications concerning the station, e.g., major or minor modifications, assignments, etc.

Exhibit No.

N/A

*cc: Jerold L. Jacobs, Esq., Rosenman & Colin LLP, 1300 19th St., NW, Suite 200,
Washington, DC 20036

6. EXTENT OF CONSTRUCTION

a. Has equipment been delivered?

☐ Yes ☒ No

If No, submit as an Exhibit a description of what equipment has been ordered, from whom and when it was ordered, and the promised delivery date (if any). If no order has been placed, so indicate and explain.

Exhibit No.
1

b. Has installation commenced?

☐ Yes ☒ No

If Yes, submit as an Exhibit a description of the extent of installation, the date on which installation commenced, and the estimated date by which construction can be completed.

Exhibit No.
N/A

7.(a) If application is for extension of construction permit, submit as an Exhibit any additional construction progress not specified above and reason(s) why construction has not been completed.

Exhibit No.
1

(b) If application is to replace an expired construction permit, submit as an Exhibit the reason for not submitting a timely extension application, together with any additional construction progress not specified above and the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

Exhibit No.
N/A

8. Are the representations, including environmental, contained in the application for construction permit still true and correct?

☒ Yes ☐ No

If No, give particulars in an Exhibit.

Exhibit No.
N/A

9. Since the filing of the applicant's last application, has an adverse finding been made or final action been taken by any court or administrative body with respect to the applicant or parties to the applicant in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, submit as an Exhibit a full disclosure concerning the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of the filing; and (ii) the disposition of the previously reported matter.

Exhibit No.
N/A

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503))

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

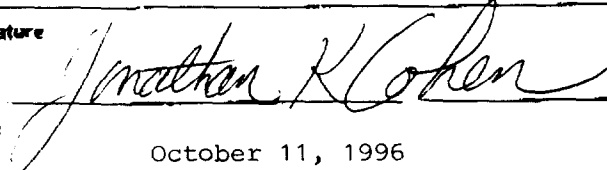
Name D/B/A Calypso Communications	Signature 
Title General Partner	Date October 11, 1996

EXHIBIT 1

D/B/A Calypso Communications
Station WVN(X)(FM)
Charlotte Amalie VI
Permit File No. BMPH-930813JA

**REASONS WHY CONSTRUCTION OF THE
ABOVE-REFERENCED FACILITIES HAS NOT BEEN COMPLETED**

D/B/A Calypso Communications ("Calypso") is permittee of unbuilt Station WVN(X)(FM), Charlotte Amalie, Virgin Islands. The subject construction permit will expire on November 15, 1996. For the reasons which follow, Calypso respectfully requests a further six-month extension of Station WVN(X)'s permit.

As explained in Calypso's April 30, 1996 supplement to its last FCC Form 307 construction permit application (File No. BMPH-930813JA), Calypso continues to be unable to construct Station WVN(X) due to circumstances beyond its control within the meaning of §73.3534(b)(3) of the Commission's Rules. Specifically, Calypso has been authorized to construct Station WVN(X) on Channel 246B, but operations on that channel are not technically feasible because Station WVN(X) would face harmful interference from a foreign FM station authorized to operate on Channel 247 at Tortola, British Virgin Islands. Hence, Calypso continues to seek alternative frequencies which it can substitute for Channel 246B at Charlotte Amalie via an FM channel rulemaking proceeding.

In that connection, during the last six months Calypso has undertaken the following important pro-active rulemaking efforts: On March 12, 1996, the Commission released a Notice of Proposed Rulemaking in MM Docket No. 96-43, in which it proposes to allot

Channel 296B1 to Frederiksted, Virgin Islands. On May 3, 1996, Calypso filed a counterproposal, which objected to that proposal and offered the following substitute plan: (a) allot Channel 297B1 to Charlotte Amalie, instead of Frederiksted; (b) modify Station WVNK's construction permit to specify operations on Channel 297B1, instead of Channel 246B, pursuant to §1.420(g) of the Rules, without allowing other expressions of interest; and (c) delete Channel 246B from the FM Table of Allotments as unusable. Calypso filed related pleadings in that proceeding on May 20, June 13, and July 10, 1996, and the matter is now awaiting Commission action.

Most importantly, Calypso emphasized in its MM Docket No. 96-43 filings that Station WVNK is caught in a technical interference impasse where Calypso is currently required to construct WVNK on an unusable frequency. Hence, Calypso urged that its counterproposal deserves a dispositive preference under the "other public interest matters" frequency allotment priority of FM Channel Policies/Procedures, 90 FCC 2d 88 (1982).

Calypso is hopeful that the Commission will grant its counterproposal and that it will soon be able to commence construction of its station on Channel 296B1. However, until then, Calypso urges that its continued inability to construct is due to reasons beyond its control which warrant grant of a further six-month extension of its construction permit.

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 15th day of October, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**REQUEST FOR EXPEDITED ACTION**" to the following:

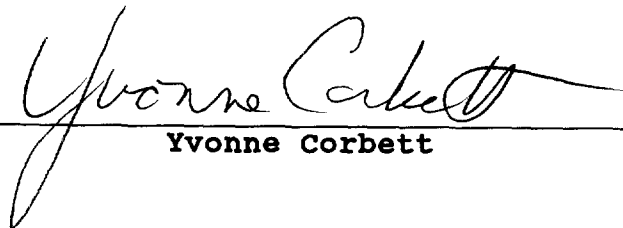
John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

Ms. Sharon P. McDonald*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

Linda Blair, Chief*
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 302
Washington, D.C. 20554

James R. Crutchfield, Supervisor*
Processing Support Group
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 332
Washington, D.C. 20554

James L. Oyster, Esq.
Law Offices of James L. Oyster
108 Oyster Lane
Castleton, Virginia 22716-9720
**COUNSEL FOR JOSE J. ARZUAGA and
RAFAEL SERRA**


Yvonne Corbett

***BY HAND**